

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

THOMAS DORSEY,

Plaintiff,

v.

9:10-CV-1196
(GTS/TWD)

JEFF NOWICKI, DR. KASKIW,
CHARMAINE BILL,
DONALD SCAGEL, RYAN BRENNAN,

Defendants.

APPEARANCES:

OF COUNSEL:

THOMAS DORSEY
Plaintiff *pro se*
1363 Echo Lake Lane
Rocky Mount, NC 27803

HON. ERIC T. SCHNEIDERMAN
Attorney General for the State of New York
Counsel for Defendants
The Capitol
Albany, NY 12224

DEAN J. HIGGINS, ESQ.

THÉRÈSE WILEY DANCKS, United States Magistrate Judge

REPORT-RECOMMENDATION

This *pro se* prisoner civil rights action, commenced pursuant to 42 U.S.C. § 1983, has been referred to me for Report and Recommendation by the Honorable Glenn T. Suddaby, United States District Judge, pursuant to 28 U.S.C. § 636(b) and Local Rule 72.3(c).

On October 25, 2011, Defendants moved for monetary sanctions because Plaintiff failed to appear for his deposition. (Dkt. No. 22.) In response to the motion, Plaintiff advised the

Court that he no longer wishes to pursue this action but instead intends “to focus his time and energy on another claim” (Dkt. No. 25 at 2.) On February 6, 2012, Magistrate Judge George H. Lowe¹ issued a text order directing Plaintiff to advise the Court on or before February 27, 2012, whether he wished to have the case dismissed with or without prejudice. Judge Lowe’s order informed Plaintiff that if the Court did not hear from Plaintiff by February 27, 2012, “the Court will dismiss the Complaint with prejudice.”

The February 27, 2012, deadline has expired and Plaintiff has not advised the Court whether he wishes to have the case dismissed with or without prejudice. Therefore, I recommend that the Court dismiss this action with prejudice in accordance with Judge Lowe’s February 6, 2012, text order.

ACCORDINGLY, it is

RECOMMENDED that this action be dismissed with prejudice; and it is further


RECOMMENDED that Defendants’ motion to compel and for sanctions (Dkt. No. 22) be denied as moot.

Pursuant to 28 U.S.C. § 636(b)(1), the parties have fourteen days within which to file written objections to the foregoing report. Such objections shall be filed with the Clerk of the

¹ Judge Lowe retired on February 9, 2012. This action was reassigned to the undersigned on February 10, 2012. (Dkt. No. 27.)

Court. **FAILURE TO OBJECT TO THIS REPORT WITHIN FOURTEEN DAYS WILL PRECLUDE APPELLATE REVIEW.** *Roldan v. Racette*, 984 F.2d 85 (2d Cir. 1993) (citing *Small v. Secretary of Health and Human Services*, 892 F.2d 15 (2d Cir. 1989)); 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72, 6(a).

Dated: March 5, 2012
Syracuse, New York


Therèse Wiley Dancks
United States Magistrate Judge